
In the Matter of the Compensation of
ADAM F. BRUCE, Claimant
Own Motion No. 22-00026OM
OWN MOTION ORDER REVIEWING CARRIER CLOSURE
Martin J McKeown, Claimant Attorneys
Law Offices of Kathryn R Morton, Defense Attorneys

Reviewing Panel: Members Ousey and Curey.

Claimant requests review of an August 19, 2022, Own Motion Notice of Closure concerning a “worsened condition” claim for right knee medial compartment osteoarthritis.¹ On review, claimant contends that his claim was prematurely closed. Based on the following reasoning, we set aside the closure notice as premature.

FINDINGS OF FACT

In May 1999, claimant compensably injured his right knee when he slipped on a fork lift. (Exs. 1, 5). The self-insured employer subsequently accepted a right knee contusion combined with chondromalacia patella, a right knee medial femoral condyle lesion, a right lateral meniscus tear, and right knee medial compartment osteoarthritis. (Exs. 6, 8, 12, 15, 25-1).

In January 2002, October 2004, and November 2008, Notices of Closure awarded a total of 27 percent scheduled permanent disability benefits. (Exs. 10, 11, 17, 18, 26).

In January 2020, claimant sought medical treatment from Dr. Caravelli, an orthopedist. (Ex. 29). Dr. Caravelli noted right knee pain, diagnosed right knee osteoarthritis, and ordered an MRI. (Ex. 29-1, -4).

A January 2020 right knee MRI report indicated degenerative chondromalacia in the medial compartment. (Ex. 30).

¹ Claimant’s May 3, 1999, work injury was originally accepted as a nondisabling claim. (Ex. 6). Thus, claimant’s aggravation rights expired on May 3, 2004. ORS 656.273(4)(b). Therefore, when claimant sought claim reopening in October 2019, the claim was within our Own Motion jurisdiction. ORS 656.278(1)(a). On March 17, 2021, the self-insured employer voluntarily reopened claimant’s Own Motion claim for a “worsened condition” (right knee medial compartment osteoarthritis). ORS 656.278(1)(a). On August 19, 2022, the employer issued its Own Motion Notice of Closure.

In July 2020, Dr. Caravelli performed a right total knee arthroplasty. (Ex. 35).

From July to December 2020, claimant treated with Dr. Caravelli and Mr. Corrigan, a physician's assistant. (Exs. 36 – 41).

In January 2021, Mr. Corrigan noted medial pain and tenderness. (Ex. 42-1). He suggested that claimant avoid high impact activities and recommended that he follow-up in six months. (*Id.*) Mr. Corrigan anticipated that claimant's pain would resolve. (*Id.*)

In March 2021, the employer voluntarily reopened claimant's Own Motion claim for a worsening of his right knee medial compartment osteoarthritis condition. (Ex. 43).

On July 21, 2021, Dr. Hinz reviewed x-rays of claimant's right and left knees. (Ex. 44). He stated that the right knee arthroplasty was unchanged and in a good position, with no evidence of loosening or subsidence of the components. (*Id.*) In claimant's left knee, he identified mild sclerosis and degenerative changes. (*Id.*)

In July 2022, Dr. Hinz signed a concurrence letter stating that on July 21, 2021, claimant's right knee condition was medically stationary because he had not returned for medical treatment after that date. (Ex. 45).

On August 19, 2022, the employer issued an Own Motion Notice of Closure for claimant's "post-aggravations rights" "worsened condition" (right knee medial compartment osteoarthritis). (Ex. 46-1). The closure notice stated that claimant's right knee condition was medically stationary on August 11, 2022. (*Id.*) In addition, the Notice of Closure noted that claimant had been released to regular work on October 9, 2020, and that he had received temporary disability benefits for July 17, 2020 through October 29, 2020. (*Id.*)

CONCLUSIONS OF LAW AND OPINION

Claimant contends that his claim was prematurely closed. Based on the following reasoning, we agree with claimant's contention.

A claim may not be closed unless the claimant's condition is medically stationary. *See* OAR 438-012-0055; *Craig E. Wetherell*, 74 Van Natta 89, 91 (2022). "Medically stationary" means that no further material improvement would

reasonably be expected from medical treatment or the passage of time. *See* ORS 656.005(17). The term “medically stationary” does not mean that there is no longer a need for continuing medical care. *See Maarefi v. SAIF*, 69 Or App 527, 531 (1984); *Pennie Rickerd-Puckett*, 61 Van Natta 336, 340 (2009).

Claimant’s “medically stationary” status is primarily a medical question to be decided based on competent medical evidence, not limited to the opinion of the attending physician. *See Harmon v. SAIF*, 54 Or App 121, 125 (1981); *Michael J. Oliver*, 63 Van Natta 728, 730-31 (2011). Medical records are evaluated in context and based on the record as a whole. *See SAIF v. Strubel*, 161 Or App 516, 521-22 (1999).

Here, Dr. Hinz signed a concurrence letter stating that claimant’s right knee condition was medically stationary on July 21, 2021. (Ex. 45). However, it does not appear that Dr. Hinz ever examined claimant or reviewed his treatment records.² (Exs. 44, 45). Rather, the sum total of Dr. Hinz’s chart notes consisted of a short synopsis of claimant’s left and right knee x-rays. (Ex. 44). Under such circumstances, we are not persuaded that Dr. Hinz’s opinion was based on a sufficiently complete history. *See Miller v. Granite Construction Co.*, 28 Or App 473, 478 (1977) (1977) (physician’s opinion that was based on an incomplete or inaccurate history was not persuasive).

Further, the sole basis for Dr. Hinz’s “medically stationary” opinion was that claimant had not returned for medical treatment after July 21, 2021. (Ex. 45). Yet, the applicable standard is not whether a worker returned for medical treatment, but, rather, whether no further material improvement would reasonably be expected from medical treatment or the passage of time. *See* ORS 656.005(17). In addition, the concurrence letter did not reference or address this standard. (Ex. 45). Therefore, we are not persuaded that Dr. Hinz applied the correct “medically stationary” standard.³ *See* ORS 656.005(17).

² The employer’s concurrence letter to Dr. Hinz stated that a full closing examination was unnecessary because the claim was governed by Own Motion rules. (Ex. 45). We acknowledge that a claimant is not entitled to a permanent disability award for an Own Motion “worsened condition” claim. *See* ORS 656.278(1)(a); *Goddard v. Liberty Northwest Ins. Corp.*, 193 Or App 238, 240, 245 (2004). However, the absence of an entitlement to a permanent disability award does not obviate the need for a physician’s opinion persuasively establishing that a claimant’s condition has reached “medically stationary” status as defined by statutory and administrative standards, as based on that physician’s thorough evaluation (clinical and/or record-based), including a complete and accurate history.

³ Furthermore, to the extent that the employer’s concurrence letter was modeled on the Workers’ Compensation Division’s (WCD’s) rules regarding a “failure to seek treatment” to support claim closure, it did not comply with the rule’s requirements. *See* OAR 436-030-0034(1); *cf. Joseph O. Tompkins*, 70

In contrast, Dr. Caravelli and Mr. Corrigan (who examined claimant on multiple occasions from July 2020 to January 2021) did not opine that claimant's right knee condition was medically stationary.⁴ (Exs. 36 – 42). Rather, when Mr. Corrigan last examined claimant in January 2021, he noted medial pain and tenderness, suggested that claimant avoid high impact activities, and recommended that he follow-up in six months. (Ex. 42-1).

Under such circumstances, the record does not persuasively establish that as of the August 19, 2022, Own Motion Notice of Closure, no further material improvement would reasonably be expected from medical treatment or the passage of time. *See* ORS 656.005(17); *Ryan Vinson*, 74 Van Natta 645, 649 (2022) (although a physician signed a concurrence letter stating that the claimant was medically stationary, the record did not establish that no further material improvement would reasonably be expected from medical treatment or the passage of time). Therefore, we are not persuaded that claimant's right knee medial compartment osteoarthritis was medically stationary at the time of closure. *See* OAR 438-012-0055; *Wetherell*, 74 Van Natta at 92 (despite a physician's "medically stationary" concurrence, the record as a whole did not establish that the claimant's condition was medically stationary at the time of closure).

Accordingly, we set aside the August 19, 2022, Own Motion Notice of Closure as premature. The claim is remanded to the employer for processing according to law, including, when appropriate, the eventual closure of the claim pursuant to OAR 438-012-0055.

Finally, claimant's counsel is awarded an "out-of-compensation" attorney fee equal to 25 percent of any increased temporary disability compensation resulting from this order, payable directly to claimant's attorney. *See* ORS 656.386(5); OAR 438-015-0080(1); *Dean R. Allen*, 71 Van Natta 1426, 1429 (2019).

IT IS SO ORDERED.

Entered at Salem, Oregon on February 22, 2023

Van Natta 508, 510-11 (2018) (Own Motion Notice of Closure was procedurally valid where the carrier strictly complied with the WCD's rules for processing a claim when a worker fails to seek treatment for more than 30 days, including sending a "30-day treatment warning" letter); *Jerod L. Jones*, 69 Van Natta 997, 1000 (2018) (same). Consequently, insofar as the Own Motion Notice of Closure was based on OAR 436-030-0034(1), it was invalid.

⁴ The record does not indicate that the employer sent a letter to either Dr. Caravelli or Mr. Corrigan inquiring about claimant's "medically stationary" status.